



EMPLOYMENT TRIBUNALS

Claimants: (1) Mr Kevin Wildsmith
(2) Miss Michelle Southern

Respondent: Gateshead Railway Club and Institute Limited

RECONSIDERATION OF JUDGMENT ON LIABILITY AND REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

Claim Number 2500752/2018: the first claimant – Mr Kevin Wildsmith
Claim Number 2500753/2018: the second claimant - Miss Michelle Southern

Judgment on Liability of Employment Judge Hargrove dated 8 June 2018 and promulgated on 13 June 2018

1. It is in the interests of justice to reconsider the above-mentioned Judgment on Liability and to vary it by adding a paragraph 1.4 in these terms:

1.4 the claim for a redundancy payment.

REASONS

2. On 7 March 2019 I was authorised by Regional Employment Judge Robertson to reconsider the above-mentioned Judgment on Liability pursuant to Rule 72(3) of the 2013 Rules of Procedure referred to above.

3. On 30 January 2019 the claimants applied for the Judgment on Liability to be reconsidered and I have received no objection to me undertaking

that review on paper without a hearing pursuant to Rule 72(1) of the 2013 Rules of Procedure.

4. The claim form filed by the claimants on 10 April 2018 included a claim for a redundancy payment at section 8.1 but the Judgment on Liability failed to make mention of that claim. The narrative in the claim form describes how the claimants went to work as usual on 2 March 2018 to find the respondent club had closed as its (public) liability insurance had expired. The club ceased to trade forthwith and the claimants were clearly redundant within the definition contained in section 139 of the Employment Rights Act 1996 (“the 1996 Act”). In any event the presumption contained in section 163(2) of the 1996 Act applies and the claimants were dismissed by reason of redundancy.

5. I am satisfied that the interests of justice require that the claim for a redundancy payment be dealt with in the Judgment on Liability and on reconsideration I vary that judgment as set out above.

Judgment on Remedy dated 3 August 2018 and promulgated on 14 August 2018

6. It is in the interests of justice to reconsider my above-mentioned Judgment on Remedy and to revoke it and to take it again in the following terms:

Claim Number 2500752/2018: the first claimant – Mr Kevin Wildsmith

1. The first claimant is entitled to a redundancy payment from the respondent in the sum of **£3447.00p** (15 weeks at £229.80 gross per week based on 10 years’ service and being aged 64 at dismissal)

2. The respondent is ordered to pay to the first claimant the sum of **£400.00p** as a compensatory award for unfair dismissal and being an award for loss of statutory rights. It is not appropriate to make a basic award of compensation as the first claimant is entitled to a redundancy payment.

3. The respondent is ordered to pay to the first claimant the sum of **£2180.00p** (10 x £218 net per week) as damages for breach of contract in respect of unpaid notice pay.

4. The claim of unpaid holiday pay advanced by the first claimant is well-founded and the respondent is ordered to pay to the first claimant the sum of **£203.28** in respect of unpaid holiday pay. This is a net amount and the respondent shall account to the appropriate authorities in respect of any income tax and employee national insurance contributions due in respect of such sum.

5. The total sum due to the first claimant from the respondent of **£6230.28p** is payable forthwith.

6. The Remedy Hearing set for 28 August 2018 is cancelled.

Claim Number 2500753/2018: the second claimant - Miss Michelle Southern

1. The second claimant is entitled to a redundancy payment from the respondent in the sum of **£3887.45p.** (14.5 weeks at £268.10 per week based on 12 years' service and being aged 46 at dismissal).

2. The respondent is ordered to pay to the second claimant the sum of **£400.00p** as a compensatory award for unfair dismissal and being an award for loss of statutory rights. It is not appropriate to make a basic award of compensation as the second claimant is entitled to a redundancy payment.

3. The respondent is ordered to pay to the second claimant the sum of **£2736.00p** (12 x £228 net per week) as damages for breach of contract in respect of unpaid notice pay.

4. The respondent is ordered to pay to the second claimant the sum of **£213.20** in respect of unpaid holiday pay. This is a net amount and the respondent shall account to the appropriate authorities in respect of any income tax and employee national insurance contributions due in respect of such sum.

5. The total sum due to the second claimant from the respondent of **£7236.65p** is payable forthwith.

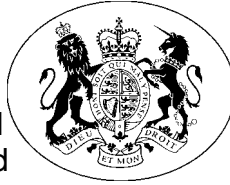
6. The Remedy Hearing set for 28 August 2018 is cancelled.

REASONS

1. On 30 January 2019 the claimants applied for my Judgment on Remedy to be reconsidered and I have received no objection to me undertaking that review on paper without a hearing pursuant to Rule 72(1) of the 2013 Rules of Procedure.

2. The Judgment on Remedy did not deal with the question of a redundancy payment as that matter was not referred to in the preceding Judgment on Liability.

3. I am satisfied that the claimants were dismissed by reason of redundancy and that fact should be reflected in the Judgment on Remedy.



4. In the circumstances, and in the interest of justice to reconsider the above-mentioned terms.

from any party, it is in the interest of justice to reconsider the Judgment on Remedy in the

5. The redundancy payment payable to the second claimant is slightly more than the amount awarded for a basic award in the original Judgment on Remedy.

Employment Judge A M Buchanan

Date: 7 March 2019

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2500752/2018** & 2500753/2018

Name of **Mr K Wildsmith** v **Gateshead Railway Club**
case(s): **Ms S Southern** and **Institute Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **8 March 2019**

"the calculation day" is: **9 March 2019**

"the stipulated rate of interest" is: **8%**

MISS K FEATHERSTONE
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.